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December 30, 2016

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By ECF

The Honorable Robert M. Levy
United States Magistrate Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Kurtz v. Kimberly-Clark Corp., et al., No. 1:14-cv-1142-JBW-RML

Dear Magistrate Judge Levy:

We represent defendant Costco Wholesale Corporation in the above-referenced litigation. This letter is submitted with the consent of counsel for plaintiff, Dr. Kurtz, and for our co-defendant, Kimberly-Clark Corp. Pursuant to the Court's recent requests for dispositive motion practice made in the course of the December 7, 2016 status conference and as part of the Court's December 12, 2016 Scheduling Order (Dkt. No. 263), defendants will be filing briefs today, Friday, December 30, 2016; plaintiffs will be filing briefs on January 13, 2017; and defendants will be filing reply briefs on January 20, 2017.

In connection with those filings, the parties respectfully request that they be permitted, on an interim basis, to have the option of filing briefs and supporting materials under seal, subject to the requirement that the parties submit, not later than ten days after submission of reply briefs, revised requests for leave to file under seal, designating those specific documents or portions of documents for which each party seeks permission to keep under seal.

We make this request for several reasons. As Your Honor is aware, the parties made a similar request in connection with their initial and supplemental class certification briefing. Those requests were granted subject to the requirement that the parties specify within two weeks the portions of their initial filings that they sought to keep under seal. (*See, e.g.*, February 27, 2015 Minute Order). The parties acted cooperatively in implementing that process, and subsequently submitted sealing requests and filed redacted versions of the briefs on the public docket. As was the case with the class certification briefing, for the briefs submitted in connection with the Court's recent orders: (i) parties may submit documents and/or deposition testimony that has been designated by other parties as "Confidential" or "Highly Confidential" pursuant to the Protective Order in this case (Docket No. 36), as well

MORRISON | FOERSTER

Hon. Robert M. Levy
December 30, 2016
Page Two

as briefing discussing such materials; (ii) counsel agree that, at this juncture, it would be impracticable for each party to identify for the other parties the materials on which such party intends to rely, and thus it is difficult to determine, in advance, exactly what materials should be included within a request for permission to file under seal; and (iii) by contrast, after the parties have exchanged their briefs and supporting materials, each party should be in a position to determine which materials should be included in a request for confidentiality.

Counsel for Plaintiff and for Defendant Kimberly-Clark consent to this request. If this request meets with the Court's approval, we respectfully request that Your Honor "so order" this request and file notice thereof on the Court's electronic docket.

Respectfully submitted,

/s/ James M. Bergin

James M. Bergin

cc: All Counsel in *Kurtz v. Kimberly-Clark Corp. et al.* (via ECF)